BRIEF IN SUPPORT OF PETITION.

SUMMARY OF ARGUMENT.

This Brief is concerned with three general subject-matters:

Part I.

A discussion of the Brand case decided by this Court in 1938 (State of Indiana v. Brand, 303 U.S. 95), because that case sets a pattern that strongly suggests that the Court should also review the case at bar.

Part II.

A discussion of some of the important fact-situations in this case, since a good understanding of the facts is particularly desirable in the consideration of this Petition.

Part III.

An Argument on the Law, pointing out how the Constitutional Rights of the Petitioners have been violated by the judgment of the reviewing Court.

ERRORS ASSIGNED.

Under Part III ante, the discussion of the law in this case is concerned with the following major points, in which, it is believed, reversible error occurred in the judgment and Opinion of the State Court:

A. The judgment below in refusing Petitioners a right to "hearing" before dismissal (as guaranteed by the DeKalb School enabling Act) amounts to a denial of due process of law, contrary to the Fourteenth Amendment.

B. The refusal of the reviewing Court below to recognize and enforce the statutory "contract powers" of the DeKalb School, in the employment of teachers, results in a deprivation of the property rights of the Petitioners in violation of the Fourteenth Amendment.

C. The holding of the reviewing Court below that the "term of employment" of the Petitioners, as teachers, was limited to "one year," constitutes an impairment of Petitioners' contracts in violation of the "Contract" Clause of the Federal Constitution.

D. The refusal of the reviewing Court below to recognize and give validity to the Rules and customs of the defendant Board, and of the DeKalb School, concerning "continuing tenure" for teachers, constitutes an impairment of Petitioners' contract rights in violation of the last-mentioned provision of the Federal Constitution.

E. The judgment and Opinion below runs counter to the construction of the Illinois laws as determined by prior decisions and by Administrative Rulings, and thereby it deprives Petitioners of their vested property rights, in violation of the above-mentioned provisions of the Federal Constitution.

ARGUMENT.

Part I.

Basis for Jurisdiction. (The Brand Case[1])

As already indicated, the *Brand* case, *supra,* (303 U. S. 95) which arose in Indiana and was decided by this Court five years ago, is a strong encouragement to the Petitioners here to seek relief in this Court.

That case, like the one at bar, involved important and unsettled questions concerning the law of academic tenure for teachers. It need hardly be stated that it has become a leading case on the law of education. There, as here, a school board had ousted a teacher and the teacher brought Mandamus, seeking reinstatement. There, as here, the teacher had taught many years in the particular school and claimed vested rights to continuing tenure. There as here the State Court held, first, that the teacher had *"no substantial right"* to be continued in her position; and second, that *"teachers' contracts are made for one year only."*[2]

In the *Brand* case, as here, a Petition for Rehearing was filed which challenged the judgment below on the ground that it, *for the first time,* interjected the same Federal questions which are raised in this case. In both cases, however, the State Court stood by its judgment, denying all relief to the teachers involved.

The teacher in the *Brand* case, as here, thereupon sought final relief in this Court. This Court granted Certiorari

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[1] The Petition for Rehearing below contained a vigorous protest against the Opinion of the State Supreme Court on the ground (among others) that it was in direct conflict with the Brand case, and therefore in violation of the Federal Constitution. We think this Court will be interested in the discussion there given. (R. 161 and 183)

[2] In this Brief where italics are used they have been added, unless otherwise indicated.

and thereafter reversed the judgment of the Supreme Court of Indiana. The first point considered by this Court in the *Brand* case concerned the right of the teacher to ask this Court to intervene. In upholding that right the Court said, among other things:

> "The Court may examine the opinion of the State Court to ascertain whether a Federal question was raised and decided.
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> "Where a State Court does not decide against a petitioner or appellant *upon an independent state ground,* but deeming the Federal question to be before it, actually entertains and decides that question adversely to the Federal right asserted, this Court has jurisdiction to review the judgment, if as here it is a final judgment."

That language fits exactly the case here at bar. The *Brand* case is therefore a clear holding that, as a matter of procedure, the Petitioners here are entitled to seek relief in this Court.

On the merits this Court held that the teacher in the *Brand* case *"had a vested property right in her indefinite contract which may not be impaired under the (Federal) Constitution."* This Court further held that the decision of the Supreme Court of Indiana *"runs counter to the policy"* of the State statute there involved; and also that the decision of the State Court had substantially reversed "earlier decisions construing its provisions."

Thus we have, in the language of this Court in the *Brand* case, three of the major complaints, on Federal grounds, against the State Court decision in the case at bar, namely:

> That the Petitioners here "had a vested property right in (their) indefinite contracts" which may not be impaired under the Federal Constitution.
>
> That the decision below "runs counter to the policy" of the Illinois statutes concerning the Teachers Col-

leges, in such a way as to violate the Federal Constitution.

That such decision also "runs counter . . . to the earlier decisions construing" the Illinois Statutes—as those Statutes have been interpreted by many years of Administrative construction—and thus violates the Federal Constitution.

This outline of the *Brand* case will suggest why we strongly urge that, on the merits, it would be in order for the Court to grant Certiorari in the case at bar.

Part II.

Important Fact-Situations in the Case.

In order more clearly to present the Federal questions involved in this case, there is here given a summarized analysis of some of its more important fact-situations. The record shows in forceful fashion that it was some of these matters that influenced the trial court to grant relief to the Petitioners here. (R. 67 and 108)

A. *Dismissal without Hearing.* The point about this case which shocks both justice and morals is the fact that no charges were ever lodged against the Petitioners, either directly or indirectly, before their dismissal; and the further fact that they were given no hearing or opportunity of defense whatever, although each of them had served for 12 years as a permanent member of the School Faculty.

The ruthless methods employed in dismissing these three Petitioners was brought out at the trial by Counsel for Defendants themselves, on examination of the President of the DeKalb School (R. 107-108):

> "Mr. Wines: Now President Adams I want to ask you what the customary method of dismissing members of the faculty there has been, for as long a time as you know anything about it?
>
> "[Colloquy between Court and Counsel.]
>
> "The Witness: In our institution the policy I have followed is to take the case to the Committee of our College and discuss the case with the Committee, stating why I think the person's services should be discontinued. * * * After the Committee reports on the *feasibility* (*sic*) I then present it to the [Defendant] Board. Then I notify the teacher of the action of the Board.
>
> "The Court: *She is through then without having heard anything about it?*
>
> "The Witness: Yes. If she hasn't heard about it in between. * * *
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> "The Court: I want to be set right. If you can go to a Committee and talk it over as to what should be done about a certain teacher, and then when you arrive at your conclusion, you go to the Board and the Board votes on it, and discharges the teacher without having heard from the teacher, without getting the teacher to tell her side of the story, I say that ought to be discontinued, whether it is universally practiced or not.
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> "The Witness: I think when action of this sort has been taken it is generally known by *other members* of the faculty."

Comment on such tactics and methods is unnecessary. We think the trial Court rightly appraised such conduct.

B. *Employment Contracts of Petitioners.* The Petitioners here all joined the faculty of the DeKalb School in the Fall of 1929. They came there highly recommended, as shown by Defendants' own records[3]. (R. 6, 9, 10) Their dismissals after long years of exemplary service came like a bolt from the sky; indeed, the fact of their dismissal was intended by the President of the School to be kept secret "until after commencement". (R. 94)

The testimony of Petitioner Phillips as to the terms of his employment contract at the time of joining the School is typical of all the Petitioners (R. 73-74):

> "I first discussed preliminary the matters of my association with the Normal School with J. C. Brown who was President of the School at that time [1929]. He called me long-distance at Freeport, Illinois and asked me to come to see him, which I did. I was not anxious for the position because I had one of the best [School] Superintendencies [in the State]. It was necessary for Mr. Brown to 'sell' me the idea. He did so by assuring me that I would become a regular member of the Faculty with all the considerations due such a member. He assured me that after three years' probation I could qualify under the 'Emeritus Plan' of the institution. Everything he said was to persuade me to take the position on account of its permanency, good salary and so forth."

It should be particularly noted that the Opinion of the reviewing Court below concedes that such a contract was made with each of the Petitioners and that after three years they "would come under the status of a permanent member of the Faculty". (R. 165)

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[3] The DeKalb School Catalog for 1940-41 was introduced in evidence by Petitioners. (R. 61) It shows a list of more than 100 members of the College Faculty. The educational background of each Faculty member is there set out. The records of Petitioners there given show that they were regularly held out as among the best educated and most important members of the School Faculty. (R. 62, 63, 64, 65, 66)

After relying on such contracts of employment for twelve years, the Petitioners have now been ousted from their positions in summary fashion, and are told by the Opinion below that their employment contracts are illegal and void; and forsooth for the bare reason that their contracts were (in the language of the Opinion below) "the unauthorized act of a school official". (R. 148)

Here again comment on these *facts* seems unnecessary. We shall discuss later, the legal aspects of the Opinion of the reviewing Court concerning this point of the employment contracts of the Petitioners.

C. *Irreparable Damage to Petitioners.* The evidence shows that each of the Petitioners have suffered irreparable damage as a result of their summary dismissals. The sworn Petition for Mandamus filed in the trial Court, under a paragraph entitled *Professional Injuries*, charged that (R. 32-33):

> "The general professional reputation of your Petitioners * * * and their standing in what may be called the Teaching World have been put under a cloud and have been smirched * * * Their chances and opportunities * * * for re-employment on the Faculties of other Schools and Colleges have been substantially reduced and in large measure destroyed by the questionable and unexplained methods * * * of their dismissals."

In support of these charges, Miss Davidson testified at that trial (R. 61):

> "I have attempted to seek other employment in the interval. I have filed applications with the so-called Teachers Employment Agencies. I have had no success. I have had no tenders or proposals made to me as a result of those applications."

The testimony of Petitioner Cramer on this point was to the same effect. (R. 72)

It is common knowledge that a teacher who has been dismissed under such circumstances finds himself practically "black-balled" everywhere else, until the cloud on his reputation has been removed. The future professional careers of these Petitioners can now be saved only through the Courts of Justice.

D. *"Lettres de cachet."* In every law suit, as in every military battle, there is some one fact that stands out as the typical incident of the event. Looking backward the historian, as well as the student of the law, can always say: *"There* was the high point of the struggle." In this case that incident involves what may be called the *"lettres de cachet"* which the President of the School demanded be signed by Petitioners Davidson and Cramer, as the price of holding their jobs for one more year. (R. 67 and 72) Those letters were obviously designed as *forced resignations,* to take effect at the end of one year with the dire possibility of even earlier decapitation. When these two teachers refused to sign on the dotted line, that instrument which the President of the School euphemistically called *"an express agreement for cooperation or immediate termination of contract"* (R. 95), they promptly had their academic heads cut off. By his demand for such a letter, the President of the DeKalb School showed his true feather. Neither statutory rights, nor principles of academic tenure in education meant anything to him, when he wanted his way.

E. *"Liquidating the Opposition."* It was brought out by Counsel for the Defendant at the trial that the President of the DeKalb School in 1939 was himself on the verge of dismissal. (R. 82) When he had ridden out that storm, he promptly set out on a campaign to get rid of all teachers who would not bend the knee. He determined to "liquidate the opposition," and accordingly started out on a plan of rather wholesale dismissal of teachers.

There was no evidence that the Petitioners here had been involved in the proceedings against him. But they were independent and strong members of the Faculty, and so he exercised his arbitrary power of "hiring and firing" to get rid of them, when they would not submit to his written demand for "cooperation." The Minutes of the defendant Board when these teachers were dismissed (at the two meetings of May 19, 1941, and July 9, 1941) show a rather droll and cynical acquiescence with the recommendation of the School President, and also an utter indifference to Educational standards and to the personal fate of these Petitioners. (R. 14-15 and 17)

F. *"Standards of American Association of University Professors."* The evidence shows that the summary procedure adopted in dismissing the Petitioners was in conflict not only with the Statutory and Administrative provisions already discussed (see *ante* pp. 5 to 8), but also was in clear violation of the accepted custom and practice as to academic freedom and tenure which had long prevailed in the DeKalb School, and in the Teachers Colleges generally. This is clearly shown by the "Security of Tenure" Rule of 1929, and the "Emeritus Service Plan" of 1934, adopted by the defendant Board, which are set out in this Petition. (*Ante pp.* 7, 8) The evidence also shows

(R. 83-85) that a few months after these three teachers were dismissed, an official Committee of the five Teachers Colleges (which had previously been created to put the whole subject of "Standards" of academic freedom and tenure on a formal and official basis) brought in a published Report. The Petitioners introduced this printed Report at the trial. (R. 83-90) That Report formally approved the so-called "Standards of the American Association of University Professors on Academic Freedom and Tenure." It is commonly known in Educational circles that those "Standards" have, during the last two decades, been widely accepted by the Colleges and Universities throughout the United States.[6]

We need hardly say that the dismissal of these teachers was in direct violation of those generally accepted "Standards," first, because there was no *hearing*, and second, because there was no recognition whatever of the right of *continuing tenure*.

G. *Pension Rights Destroyed.* The evidence shows that Miss Davidson, who had been Dean of Women at the DeKalb School for 12 years, at a salary of $3600, had taught in the public school system for 27 years (R. 70), and for a large part of that time had contributed to the Teachers Pension System. Under the Teachers Pension Act which was in force at the time of her dismissal, she would eventually be entitled to a rather small pension of

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[6] The Courts have taken judicial notice of that Association and its "Standards." Thus in *Cobb* v. *Howard University*, 106 Fed. (2) 860, in a case arising in the District of Columbia, the Court had before it a case involving academic tenure in that school. In a footnote to the opinion the reviewing Court says:

> "It is common knowledge that teachers in seeking academic connections at the Collegiate level lay increasingly greater emphasis upon provisions for tenure and retirement. The American Association of University Professors, composed on January 1, 1939 of 14591 members devotes much of its effort toward promotion and protection of teachers rights of tenure."

$33 per month. (R. 69-70) But under a new Pension Act (Ill. Rev. Stat. chap. 144, sec. 79, *et seq.*) which went into effect in the summer of 1941—*only a few weeks after her dismissal*—Miss Davidson would have been entitled, on retirement, to a pension of $150 per month. (R. 31)

The same general situation exists with respect to the deprivation of pension rights of Petitioner Cramer. (R. 31-32)

We have here, therefore, a situation where the pension rights of these two Petitioners have been grievously damaged and destroyed by the judgment and Opinion below. This pension situation alone constitutes such a serious deprivation of property rights as to justify, and we believe to require, the reversal of the judgment of the State Court.

H. *Minority Opposition on Defendant Board.* One of the redeeming features in this case (besides the forthright action and decision of the trial court) is the opposition which the record shows a *minority* of the defendant Board registered in the Minutes to the dismissal of the Petitioners. (R. 17) One of the two protesting members of the defendant Board was Mr. Jacob Alschuler, a widely-known lawyer of Aurora, Illinois. He lives within a few miles of the DeKalb School and (as we urged below) must be assumed to be the member of the Board most familiar with the conditions surrounding this case, *at the School.* Mr. Alschuler appeared as a witness and testified strongly in support of the Petitioners. We think this Court might be interested in his summarized testimony. (R. 79-82) Mr. Alschuler also filed a separate Answer at the trial, formally admitting that Petitioners were entitled to the relief they asked. (R. 41-42)

I. *The Rule of "Fair Play."* We might continue this recital of striking facts in this case, but enough of the story has been given to show how the stage was set for the ouster of these Petitioners from the posts on the Faculty of the DeKalb School where they had spent a considerable part of the best years of their professional lives. We end this part of our Brief with this suggestion:

Is it not a little strange that the reviewing Court, even though it felt compelled under the law to uphold the ouster of these teachers, had not a single word of criticism about the methods by which their ouster was achieved? Can it be that the reviewing Court felt none of the repugnance for the conduct of the School authorities, brought out by the evidence, which the trial court obviously felt? Does not the fact of the entire absence from the Opinion below of a single suggestion or word of disapproval for such methods in public Education cast a shadow of its own in this case?

This Court has recently spoken in plain terms on the duty of Administrative Boards and the Courts alike, in dealing with the "liberty and property of the citizen" where a *hearing* is required. In the leading case of *Morgan* v. *United States,* 304 U. S. 1, this Court has laid down a rule for such proceedings which has since become embedded in our law, and is known as the Rule of Fair Play. In construing the Packers and Stockyards Act, which required the Secretary of Agriculture to proceed only after "full hearing" and in reversing the cause for the reason that such guaranty had not been complied with, this Court said, speaking through Chief Justice Hughes:

> ". . . In administrative proceedings of a quasi-judicial character, the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. They demand 'a fair and open hearing'—essential alike to the legal validity of the

> administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard'."

That doctrine has recently been applied to the protection of teachers from summary and arbitrary dismissal. The Supreme Court of Minnesota in January of 1943 had before it a case involving the dismissal of several teachers by the School Board of the City of Duluth. *State ex rel. Ging* v. *Board of Education,* 7 N. W. (2) 544. In reversing the School Board, which had dismissed the teachers (and the trial court which had not fully protected their rights) the Minnesota Court referred to the *Morgan* case, *supra,* and said:

> "The least the Courts can do is to hold high the torch of 'fair play' which the highest Court of the land has made the guiding light to administrative justice. *Morgan* v. *United States,* 304 U. S. 1."

That rule should have been applied in the case at bar; and if that had been done the judgment of the trial court would have been affirmed instead of reversed.

Part III.

Constitutional Rights of Petitioners Violated.

Errors Assigned.

Our discussion of the law of this case, on the merits, is concerned with the following major points:

A. The judgment below in refusing Petitioners a right to "hearing" before dismissal (as guaranteed by the DeKalb School enabling Act) amounted to a denial of due process of law, contrary to the Fourteenth Amendment.

B. The refusal of the reviewing Court below to recognize and enforce the statutory "contract powers"

of the DeKalb School, in the employment of teachers, resulted in a deprivation of the property rights of the Petitioners in violation of the Fourteenth Amendment.

C. The holding of the reviewing Court below that the "term of employment" of the Petitioners, as teachers, was limited to "one year," constituted an impairment of Petitioners' contracts in violation of the "Contract" Clause of the Federal Constitution.

D. The refusal of the reviewing Court below to recognize and give validity to the Rules and customs of the defendant Board, and of the DeKalb School, concerning "continuing tenure" for teachers, constituted an impairment of Petitioners' contract rights in violation of the last-mentioned provision of the Federal Constitution.

E. The judgment and Opinion below runs counter to the construction of the Illinois laws as determined by prior decisions and Administrative Rulings, and thereby other particulars in so far as it deprived Petitioners of their vested property rights, in violation of both of the above mentioned provisions of the Federal Constitution.

A. Statutory Guarantee of "Hearing," etc.[7]

We have seen that by virtue of repeated statutory provisions in Illinois the teachers in the Normal Schools of the State (now the Teachers Colleges), when once permanently appointed to the Faculty, could only be dismissed "for proper cause" and after "hearing" and "reasonable opportunity for defense." This provision in the DeKalb enabling Act is as follows:

"Sec. 12. *Trustee's Powers.* The said Board of Trustees" (now the Teachers College Board of Illinois)

[7] This particular point was vigorously stressed in our Petition for Rehearing below. (R. 163)

> "shall appoint instructors, together with such other officers as may be required in said Normal School, fix their respective salaries, and prescribe their several duties. *They shall also have power to remove any of them for proper cause after having given ten days' notice of any charge which may be duly presented, and reasonable opportunity for defense.*"

This idea of an implicit guaranty of *continuing tenure* for Normal School teachers came into the law of Illinois with the establishment of the first Normal School in 1857. (R. 156) A similar provision was specifically incorporated by the Legislature in each of the five Normal School enabling Acts. Here then is a provision of the law of Illinois which has stood unchallenged for 85 years. It has now, suddenly, and after vested rights have become established under it, been emasculated and, in effect, repealed by the judgment and Opinion below. And yet all that the State Court says in justification of its refusal to apply the above quoted statute is:

> "* * * Such a provision for removal for cause, if still in effect, doubtless was intended to apply to removals during the course of a school year." (R. 147)

The first thing to be said about this language of the Court, which strongly questions whether this provision is "still in effect" is this: We cited and quoted in our main Brief below, a recent Act of the Illinois Legislature,[8] which specifically *reserved from repeal* the above quoted section from the DeKalb School enabling Act. Here then we have the Legislature of the State, just two years before this controversy arose, showing a clear intent to preserve and enforce this provision as to "hearing" before dismissal

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[8] Laws of Illinois, 1939, p. 1167; not in the Revised Statutes of Illinois, because it is purely a repealing act.
The corresponding sections in each of the other four Normal School enabling Acts were likewise specifically reserved from repeal.
See note on this point in our Petition for Rehearing below. (R. 163)

of teachers. And yet the Opinion below has now put into the State Reports a definite challenge as to whether this section of the Statutes of Illinois "is still in effect."

The second thing to be said about the above-quoted language from the Opinion below is that the interpretation of the wording used in the statute is obviously a tortured construction of the Legislative language. Is it to be assumed that the Legislature repeated this guaranty of "hearing" in each of the five Normal School Acts for the narrow purpose of having it apply only "during the course of a school year"? The only logical interpretation of the Legislative intent is that some measure of protection *against arbitrary and dictatorial action* was thought desirable for teachers in the Normal Schools. In other words, the Legislature clearly intended to protect teachers against just such treatment as these Petitioners got.

The language of the Opinion of the reviewing Court below on this point of notice and "hearing" is a covert invitation to all Educational Administrators in Illinois to exercise despotic power over their Faculties.

In our Brief before the State Court we cited and discussed many cases on this point of "hearing" before dismissal. If Certiorari should be granted by this Court we will argue them again in the fashion they deserve.

B. Power of Contracting with Teachers.

The provision concerning the Contract Powers of the DeKalb School is set out in this Petition on page 6 and is, in part, as follows:

> "*Section 1.* A body politic and corporate is hereby created by the name of the Northern Illinois Normal

> School, to have perpetual succession, with power to contract and be contracted with, to sue and be sued, to plead and be impleaded" etc. (Rev. Stat. of Ill., Ch. 122, Sec. 451.)

We have seen that the State Court frankly concedes that when these Petitioners were first employed they were "assured by the President of the School" that after a probationary period of three years "they would come under the status of permanent members of the Faculty." (R. 145) The State Court, however, holds these contracts were illegal and void because such contract rights, in the language of the Court, "cannot be acquired * * * by the unauthorized act of a school official." (R. 148) The reason as given in the Opinion below is that—

> "It has long been the law that a public-school board, under authority to appoint teachers and fix their salaries, may not employ them for a tenure longer than the current school year." (R. 146)

We reluctantly say that the reviewing Court, for some unexplained reason, seized on this point of *annual contracts* for teachers, as the chief basis for its decision. It is true that two early decisions in Illinois concerning the Common Schools, decided in 1877 and 1879, (cited in the Opinion below), contain language that may be cited *arguendo* for such a proposition. But those cases are hoary with age and are utterly out of line today, *even for the Common Schools.* Moreover, those early cases (*Stevenson* v. *School Directors,* 87 Ill. 255, and *Davis* v. *School Directors,* 92 Ill. 293) were each of them construing a *School Tax law* which involved *annual* tax levies for school teachers' pay. The Court in those cases was *not* construing (and was *not concerned with*) the general power of school boards to contract with teachers, as the Opinion below would have us assume.

Finally, it should be said that there is not a single case in the books in Illinois that suggests such a doctrine of

"one year" contracts applies to the Teachers Colleges, each of which has its own statutory contract powers.

While there are no cases in Illinois on the precise point of teachers' contracts in the Teachers College, there are four cases (*Board of Education* v. *Greenbaum & Sons*, 39 Ill. 609, 1864; *Burr* v. *City of Carbondale*, 76 Ill. 455, 1874; *Board of Ed.* v. *Bakewell*, 122 Ill. 339, 1887; and *Boehm* v. *State Treasurer*, 182 Ill. 154, 1899) *all* of which are *Normal School* cases and all of which construe the specific statutory language above quoted. All of these cases hold that the *general contract* powers of these Schools is practically unlimited, except by the wording of the statute itself.

As a matter of fact, so far as power to make binding contracts with teachers is concerned, the Teachers Colleges are, as we have seen, in an entirely different category from the Common Schools. The Teachers Colleges are in practically the same general category, both from a statutory basis and an educational basis, as the State University. Strangely enough, the reviewing Court at the same term at which it decided the case at bar also decided an important case involving the employment contract powers of the University of Illinois (*People ex rel. University* v. *Barrett, Attorney General*, 46 N. E. (2) 951) which is implicitly in conflict with the Opinion in the case at bar.[9]

The realistic fact is that *continuing contracts* with teachers have been made by all of the Normal Schools for many years. The uncontradicted testimony at the trial showed that at the DeKalb School "Permanent tenure came in under Dr. Cooke's administration—about 1909". (R. 77) It is also a fact (as shown by the "Rules" of the defendant Board, set forth at pages 7 to 9 of this Petition) that the defendant Board has itself,

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[9] We stressed this point of conflict between the two Opinions in our Petition for Rehearing below. We suggest that what we there say is true and convincing and that this Court will find it of interest. (R. 177-179)

for a period of at least fifteen years, authorized and approved "security of tenure" for teachers. That is the language used by the Board in its "Rule 11" adopted in 1928. (See this Petition, p. 7)

In spite of this clear evidence of a traditional construction of the Normal School enabling Acts, stretching over more than a generation, whereby *continuing contracts* were regularly made, and in spite of the broadest kind of contract-power granted to these Schools in the wording of their several enabling Acts, the reviewing Court below holds such contracts void. To achieve this result, it uses the curt and extraordinary language about "one year" contracts quoted above.

It is an old saw that "close cases make bad law." But this is not even a close case. The implicit result of the Opinion below on this point of "teachers' contracts" not only does grave violence to the vested rights of these three Petitioners, but it puts into the Books, in one of our leading States, a reactionary doctrine of law in the important field of Education, at a time when the opposite course is dictated by every social and patriotic consideration.

Here again we cited and argued many cases on this point of *contract power* in our Brief before the State Court. We will appreciate arguing them again if Certiorari is granted by this Court.

C. False Doctrine as to "One-Year" Contracts.

In our main Brief, we cited and discussed many Normal School cases from Wisconsin, Pennsylvania, California, Indiana, Massachusetts and New York, where the courts

in Mandamus proceedings had reinstated teachers, and had relied on statutes no broader or more effective than the laws of Illinois. We will not stop here to cite these cases. The reviewing Court below swept them all aside with this statement:

> "Decisions have been cited from other States construing teachers' tenure laws, but each of those decisions is based on a positive statute in each State permitting such tenure, and they are therefore inapplicable to the present situation and unnecessary to discuss or analyze." (R. 147)

It is not logical to think that the Illinois law concerning Normal School tenure is so different from that of all the other States that not a single decision from another State even deserves consideration in such an important case as this. The opinions in all of those cases cite and discuss decisions from other states. We believe those cases deserve some attention and particularly we believe that the Wisconsin case (*Wisconsin ex rel. Karnes* v. *Board of Regents of Normal Schools,* 269 N. W. 284, 1936) is almost a "black hog" case, and is so convincing as to be almost controlling. Yet all of these cases from other States are simply ignored by the Opinion below.

In our Brief below we cited and discussed four Illinois cases, decided in recent years, each of which takes a liberal attitude in protecting a public school teacher against *arbitrary action* of a school board. (*Hartman* v. *Board of Education,* 356 Ill. 577, 191 N. E. 279, decided in 1934; *Sloan* v. *School Directors,* 373 Ill. 511, 26 N. E. (2) 846, decided in 1940; *Armstrong* v. *City of Chicago,* 247 Ill. App. 584, decided in 1928; and *Bowden* v. *Board of Education,* 264 Ill. App. 1, decided in 1931.) We will stop here only to discuss the Sloan case, *supra.* In that case the teacher had been employed under a contract *for three years.* She taught one year, when she was discharged without any hear-

ing and without cause. The Supreme Court of Illinois in that case took a position squarely in conflict with its position in this case. One of the specific contentions of the defendant Board was that it "had no authority to employ appellant for a term of more than one year." In denying that contention and awarding relief to the teacher, the Illinois Court there said:

> "In support of their contention that a Board of School Directors cannot employ a teacher for more than one year, appellees cite *Stevenson* v. *School Directors,* 87 Ill. 255, and *Davis* v. *School Directors,* 92 Ill. 293. Those cases do so hold, but *they have no application here* for they were decided before the enactment of Sec. 127a *supra,* Laws of Illinois, 1927, p. 823."

It will be noted that the Stevenson case *supra* and the Davis case *supra,* which the Illinois Supreme Court said in 1940 were *no longer the law in Illinois,* are the very cases cited and relied on in the Opinion below for the "one year contract" doctrine laid down in this case.

We have used the words "False Doctrine" advisedly at the head of this part of our Brief. We believe we have proved our right to use such strong language.

D. Rules and Customs of Board Violated.

In this Petition (*ante,* pages 7 to 9) we have set out four formal Rules of the Defendant Board which in effect granted "continuing tenure" to these Petitioners, each of which Rules has been violated and rendered nugatory by the judgment and Opinion below. We have seen that under two express provisions of the Illinois Statutes[10] the

[10] Civil Administrative Code, Ill. Rev. Stat., Chap. 127, Sec. 58; and DeKalb School enabling Act, Ill. Rev. Stat., Chap. 122, Sec. 451.

Defendant Board is specifically granted power to adopt "rules and regulations for the government of its *members, official agents* and *employees.*" For many years these Rules have been recognized and enforced in all these Schools. The Attorney General of the State as we have seen (*ante,* p. 8 this Petition) has specifically approved the validity of one of the most significant of these Rules covering security of tenure for teachers in these Schools.

And yet in spite of all this the judgment below with one blow has destroyed all the Petitioners' vested rights acquired under such Rules and such interpretation. We will not labor this point further. We have already said, and we now repeat, that the refusal of the reviewing Court to recognize and enforce these Rules and Petitioners' contracts under them, constitutes a violation of "Contract Clause" of the Federal Constitution.

E. Prior Construction of Laws Upset.

We have already pointed out that the Opinion below is in implicit conflict with the Opinion of the State Court in the *Sloan* case, *ante,* on the question of the term of teachers' contracts. We have also pointed out in our Petition for Rehearing, in vigorous language (R. 177-179) that the Opinion below is in conflict with the recent Opinion of the State Court in the University of Illinois case.

We believe we have here a clear example of the thing this Court condemned in the *Brand* case (*supra*)—that is a *later* decision of the State Court upsetting an accepted *prior construction* of State law under which vested rights have accrued.

We urge that it was just for such cases as this that the jurisdiction of this Court over "state laws" was put into the Federal Constitution. The Opinion below, we submit, is clearly *out* of *line* with the prior interpretation of the laws of Illinois. The judgment below "runs counter to the * * * earlier decisions" (as this Court said in the *Brand* case) with regard to continuing contracts for these teachers, and is therefore wrong.

Conclusion.

When Miss Davidson was on the stand, Counsel for Respondents brought out the following testimony about her interview with the School President just a few days before she was dismissed (R. 67):

> "He said that if I would sign a paper stating that I would 'cooperate' that I might continue for the present year in carrying on my duties and that he would be the sole determinor as to whether or not I was cooperating. I asked him for a clear understanding of 'cooperation' and he said if I felt that way about it I might resign right now.
>
> "He said if I did anything about this action my contract would be terminated at once."

It is hardly to be wondered at that the trial court was shocked by such methods and that the following colloquy took place (R. 67):

> "The Court: Was that in Illinois?
> The Witness: Yes.
> The Court: It sounds like some other place."

Here we have the pitch-note of this entire controversy. Arbitrary and dictatorial action resulting in the total destruction of the Petitioners' rights to their long-term contracts at the College where they had taught for many years—and for a mere personal whim of the School Presi-

dent. From such a beginning there has resulted a gross violation of the laws of the State of Illinois so far as the highly cherished and vested rights of these Petitioners are concerned. The trial court justly granted the Petitioners the only relief which would in any way recompense them. The reviewing Court struck down that relief, and denied every right of the Petitioners. For some reason the reviewing Court felt called upon to render a Draconian judgment against these teachers.

It has thus turned out, in this case, as sometimes happens, that this Honorable Court is the last resort of the injured litigant against semi-official despotism and injustice. For these Petitioners have been most grievously wronged and injured—even if the reviewing Court, for some obscure reason, felt called upon to sustain the arm of bureaucracy against them.

We repeat here what we urged in our Petition for Rehearing below (R. 154):

> "We need hardly suggest that the decision and Opinion in this case comes as a shock to the three teachers who are Petitioners here. They believed in the merit of their case when they started it, and they still hold to that belief. They feel they have been caught in some whirlpool of changing social views, perhaps somehow related to current public events, or rather they have been caught in a strong ebb-tide of such changing opinion. For them the decision (of the reviewing Court) rests in the field of policy making, rather than in the field of jurisprudence."

For the foregoing reasons, it is respectfully submitted that this Petition for Certiorari should be granted.

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